

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

MANUEL GUTIERREZ,  
BOP #08652-298,

Plaintiff,

vs.

SIX UNKNOWN NAMES AGENTS;  
BARACK OBAMA, President of the  
United States,

Defendants.

Civil No. 13cv1289 MMA (JMA)

**ORDER DISMISSING CIVIL  
ACTION WITHOUT PREJUDICE  
FOR FAILING TO PAY  
FILING FEE REQUIRED  
BY 28 U.S.C. § 1914(a) AND/OR  
FAILING TO MOVE TO  
PROCEED IN FORMA PAUPERIS  
PURSUANT TO  
28 U.S.C. § 1915(a)**

Plaintiff, currently detained at the Immigration and Customs Enforcement Processing Center located in El Paso, Texas, and proceeding pro se, filed an illegible one-page complaint entitled “Civil Rights Action with the Writ of Summons and Complaint” “under 42 U.S.C. § 1983” (ECF No. 1) on June 3, 2013.<sup>1</sup>

<sup>1</sup> On June 13, 2013, before this Court issued any Order whatsoever, Plaintiff also filed a Notice of Appeal to the Ninth Circuit “from the decision (describe it) entered in this action on the 10 day of June, 2013.” See ECF Doc. No. 2. Because there is no such Order, Plaintiff’s appeal is obviously premature. Therefore, this Court retains jurisdiction over the action. See *United States v. Garner*, 663 F.2d 834, 837 (9th Cir. 1981) (noting that if “the deficiency in a notice of appeal, by reason of untimeliness, lack of essential recitals, or reference to a nonappealable order, is clear to the district court, it may disregard the purported notice of appeal and proceed with the case, knowing that it has not been deprived of jurisdiction.”) (citing *Ruby v. Secretary of United States Navy*, 365

1     **I. Failure to Pay Filing Fee or Request IFP Status**

2         All parties instituting any civil action, suit or proceeding in any district court of  
 3 the United States, except an application for writ of habeas corpus, must pay a filing fee  
 4 of \$350. *See* 28 U.S.C. § 1914(a).<sup>2</sup> An action may proceed despite a party's failure to  
 5 pay this filing fee only if the party is granted leave to proceed *in forma pauperis* ("IFP")  
 6 pursuant to 28 U.S.C. § 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th  
 7 Cir. 2007); *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999).

8         Plaintiff has not prepaid the \$400 in filing and administrative fees required to  
 9 commence a civil action, nor has he submitted a Motion to Proceed IFP pursuant to 28  
 10 U.S.C. § 1915(a). Therefore, the case cannot yet proceed. *See* 28 U.S.C. § 1914(a);  
 11 *Andrews*, 493 F.3d at 1051.

12     **II. Conclusion and Order**

13         For the reasons set forth above, the Court hereby:

14         (1)   **DISMISSES** this action *sua sponte* without prejudice for failing to pay the  
 15 \$400 civil filing and administrative fee or submit a Motion to Proceed IFP pursuant to 28  
 16 U.S.C. §§ 1914(a) and 1915(a); and

17         (2)   **GRANTS** Plaintiff **forty five (45)** days leave from the date this Order is  
 18 filed to: (a) prepay the entire \$400 civil filing and administrative fee in full; **or**  
 19 (b) complete and file a Motion to Proceed IFP which includes a certified copy of his trust  
 20 account statement for the 6-month period preceding the filing of his Complaint. *See* 28  
 21 U.S.C. § 1915(a)(2); S.D. CAL. CIVLR 3.2(b).<sup>3</sup>

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22         F.2d 385, 388-89 (9th Cir. 1966) (en banc)).

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 24         <sup>2</sup> All parties filing civil actions *on or after May 1, 2013*, must pay an additional  
 25 administrative fee of \$50. However, the additional \$50 administrative fee is waived if  
 Plaintiff is granted leave to proceed IFP.

26         <sup>3</sup> Plaintiff is cautioned that if he chooses to proceed further with this action either  
 27 by paying the full \$400 civil and administrative filing fee required by 28 U.S.C.  
 28 § 1914(a), or moving to proceed IFP, his Complaint, which is currently comprised of a  
 single illegible paragraph of incomprehensible legal jargon seeking unspecified relief  
 against unidentified "agents" and the President of the United States, will be screened and  
 immediately dismissed as frivolous pursuant to 28 U.S.C. § 1915A(b) and 28 U.S.C.  
 § 1915(e)(2)(b). *See Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc)

1           **IT IS FURTHER ORDERED** that the Clerk of the Court shall provide Plaintiff  
2 with this Court's approved form "Motion and Declaration in Support of Motion to  
3 Proceed *In Forma Pauperis*." If Plaintiff fails to either prepay the \$400 civil filing fee  
4 or complete and submit the enclosed Motion to Proceed IFP within that time, this action  
5 shall remain dismissed without prejudice and without further Order of the Court.

6           **IT IS SO ORDERED.**

7           DATED: June 17, 2013

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9           Hon. Michael M. Anello  
10           United States District Judge

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27           (noting that 28 U.S.C. § 1915(e) "not only permits but requires" the court to sua sponte  
28 dismiss an *in forma pauperis* complaint that fails to state a claim); *see also Rhodes v. Robinson*, 621 F.3d 1002, 1004 (9th Cir. 2010) (discussing sua sponte screening required by 28 U.S.C. § 1915A(b) of all prisoner complaints).